THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION No.12489 of 2005
WRIT PETITION No.12848 of 2005
WRIT PETITION No.12865 of 2005
WRIT PETITION No.12875 of 2005
AND
WRIT PETITION No.12994 of 2005

Dated : 14-12-2007

W.P.No.12489 of 2005 :

Between:

Chief General Manager Telecom.,
A.P. Telecom, BSNL, Doorsanchar Bhavan,
Nampally Station Road,
Hyderabad – 500001 and another. …
Petitioner/s
And

B.Bala Guravaiah,
S/o. late Thirumalaiah,
32 years, Casual Mazdoor,
O/o. Divisional Engineer (Phones),
B.S.N.L., Shamshabad and 3 others. …
Respondent/s

W.P.No.12848 of 2005

Between:

Chief General Manager Telecom.,
A.P. Telecom, BSNL, Doorsanchar Bhavan,
Nampally Station Road,
Hyderabad – 500001 and another. …
Petitioner/s
And

P. Hari Prasad, s/o. P.Krishna,
aged 27 years, Casual Mazdoor,
BSNL, Shamshabad,
O/o. Divisional Engineer (Phones) and 9 others. …

Respondent/s

W.P.No.12865 of 2005

Between:

Chief General Manager Telecom.,
A.P. Telecom, BSNL, Doorsanchar Bhavan,
Nampally Station Road,
Hyderabad – 500001 and another. …
Petitioner/s
And

G. Sanyasi Rao, s/o. Alaka Narayana,
Aged 39 years, Casual Mazdoor,
O/o. Divisional Engineer (Phones),
B.S.N.L., Ghatkesar and 6 others. …
Respondent/s

W.P.No.12875 of 2005

Between:

Bharat Sanchar Nigam Limited,
Rep.by Chairman-cum-Managing Director,
Statesman House, Barakhamba Road,
New Delhi – 110001 and 2 others. …
Petitioner/s
And

P. Vikramarkudu,
S/o. P.Venkateswar Rao,
Aged 27 years, Casual Mazdoor,
O/o. Divisional Engineer (Phones),
B.S.N.L., Medchal. …
Respondent/s

WRIT PETITION No.12994 of 2005

Between:

Chief General Manager Telecom.,
A.P. Telecom, BSNL, Doorsanchar Bhavan,
Nampally Station Road,
Hyderabad – 500001 and 2 others. …
Petitioner/s

And

T. Ramaiah, s/o. Chennaiah,
Aged 34 years, Casual Mazdoor,
O/o. GM Telecom District,
Sangareddy and 6 others. …
Respondent/s

THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE K.C.BHANU

WRIT PETITION No.12489 of 2005
WRIT PETITION No.12848 of 2005
WRIT PETITION No.12865 of 2005
WRIT PETITION No.12875 of 2005
AND
WRIT PETITION No.12994 of 2005

ORAL COMMON ORDER: (**per the HON'BLE SRI JUSTICE D.S.R.VARMA**)

Since the issue involved in all the abovementioned writ petitions is one and the same, they are heard together and being disposed of by this common order.

2. Heard Sri C.V.Mohan Reddy, learned Senior Counsel, representing Ms. P.Sarada, learned counsel appearing for the petitioners-Bharat Sanchar Nigam Limited (for brevity "the BSNL") and Sri J.Sudheer, learned counsel appearing for the respondents, in all the writ petitions.

3. W.P.Nos.12489, 12848, 12865 and 12994 of 2005 are filed against the common order, dated 09.01.2004, in O.A.Nos.1213, 1026, 1108 and 1107 of 2003, respectively, and W.P.No.12875 of 2005 is filed against the order, dated 27.08.2003, in O.A.No.881 of 2003; passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for brevity 'the Tribunal'), directing the respondents therein (petitioners herein) to regularize the services of the applicants therein (respondents herein).

4. The facts, in brief, are as under:

Originally, the BSNL was under the control of the Department of Telecommunications, Government of India, New Delhi. Subsequently, with effect from 01.10.2000, it was incorporated as a company under the Companies Act, 1956, and ceased to be under the control of the Department of Telecommunications, Government of India. Various persons were working as casual labourers for a long time in different capacities in various Divisions of the BSNL. While so, when the respondents herein along with others, who are working as casual labourers, approached the Tribunal by filing various original applications (for brevity "the O.As."), the Tribunal directed the respondents therein to consider the cases of the applicants therein for regularization of their services by granting temporary status. Accordingly, the services of some of the casual labourers were regularized by the BSNL. But, insofar as the respondents herein, who belongs to Hyderabad Division, their cases were not considered for regularization of services, for various reasons. It appears, there was some official correspondence between the Heads of the Divisions of the BSNL as well as the Central Office at New Delhi regarding the regularization of services of the casual labourers working under their control.

5. Since their cases were not considered for regularization, again they approached the Tribunal seeking regularization of their services by granting temporary status. The same was contested by the BSNL. However, the Tribunal disposed of the O.As., directing the BSNL authorities to dispose of the applications of the applicants therein by passing appropriate orders.

6. Since the said orders of the Tribunal were not fully complied with, contempt proceedings in C.P.No.28 of 2004 and batch were initiated by the respondents herein in which the Tribunal passed orders on 08.04.2004, the relevant portion of which reads thus:-

> **"....The learned counsel for the respondents, no doubt, has pointed out that this Tribunal had directed them to pass appropriate orders by implementing the orders mentioned above and therefore, the authorities are entitled to consider the eligibility criteria of the applicants for conferring the temporary status and giving posting orders. But, as rightly pointed out by the learned counsel for the petitioner that the appropriate orders to be passed by the respondents in the context of the orders passed by this Tribunal are only the posting orders to be given to the petitioners conferring temporary status and consequently**

to regularise them in terms of the approval given by the higher authorities subject to production of date of birth certificate, caste certificate, medical fitness certificate, etc., in terms of the letter dated 07.08.2002 issued by the BSNL, copy of which is produced by the petitioners along with their material papers in these petitions.

We, therefore, find no merits in any of the contention of the respondents and the respondents are directed to implement the orders by 29.04.04 positively……."

Aggrieved by the same, the BSNL filed W.P.No.11826 of 2004 and batch, before this Court, challenging the aspect of jurisdiction of the Tribunal to entertain the O.As."

7. While dealing with W.P.No.11826 of 2004 and batch, a Division Bench of this Court (Hon'ble Sri Justice G.Bikshapathy & Hon'ble Sri Justice P.S.Narayana), though considered the aspect of jurisdiction of the Tribunal, declined to go into that aspect and eventually, by a common order, dated 01.03.2005, dismissed the said batch of writ petitions, directing the BSNL to comply with the orders of the Tribunal, within a further period of six weeks therefrom.

8. Since the said common order of the Division Bench of this Court was not complied with by the BSNL, the respondents herein were forced to file contempt cases in C.C.No.817 of 2005 and batch. When the said batch of contempt cases came up for hearing before another Division Bench of this Court (Hon'ble Smt. Justice T.Meena Kumari & Hon'ble Sri Justice P.Lakshmana Reddy), it was reported by the learned Standing Counsel appearing for the BSNL that the common order, dated 01.03.2005, passed in W.P.No.11826 of 2004 and batch, was complied, however subject to outcome of W.P.No.12489 of 2005 and batch. Recording the same, by common order, dated 08.09.2005, this Court closed the said batch of contempt cases.

9. Subsequently, when W.P.No.12489 of 2005 and batch came up for hearing before another Division Bench (Hon'ble Sri Justice B.Prakash Rao & Hon'ble Sri Justice Ramesh Ranganathan) of this Court, by a common order, dated 14.12.2006, the said batch of writ petitions were allowed on the submission made across the Bar that they were covered by the decision of the same Division Bench in W.P.No.1657 of 2004 and batch, dated 29.11.2006, wherein it was held that the BSNL is not amenable to the jurisdiction of the Tribunal. Pursuant to which, the respondents herein were reverted to their original status as casual labourers,

on 18.12.2006. Aggrieved by the said common order of the Division bench of this Court, dated 14.12.2006, in W.P.No.12489 of 2005 and batch, review applications Rev.W.P.M.P.No.764 of 2007 and batch have been filed by the respondents herein, and this Court, by a common order, dated 02.01.2007, allowed the said review applications on the ground that W.P.No.12489 of 2005 and batch were not decided on merits and decided basing on the judgment, dated 29.11.2006, passed in W.P.No.1657 of 2004 and batch. Consequently, the present batch of writ petitions was restored to the file, which is now before us for consideration.

10. Sri C.V. Mohan Reddy, learned Senior Counsel appearing for the BSNL, mainly raised two grounds – *firstly*, whether the Tribunal has jurisdiction under the Administrative Tribunals Act, 1985 (for brevity 'the Act') to entertain the O.As., filed by the respondents herein. In other words, it is his contention that the BSNL, being a company incorporated under the Companies Act and having ceased to be under the control of the Department of Telecommunications, Government of India, is not susceptible to the jurisdiction of the Tribunal and, therefore, the Tribunal lacks inherent jurisdiction to entertain the present O.As., and *secondly*, no adequate opportunity had been accorded by the Tribunal to contest the matter.

11. Incidentally, the learned Senior Counsel also contends that since certain irregularities have been noticed by the BSNL, the cases of the respondents herein were not considered for regularization of their services. He further contends that though the earlier Division Bench of this Court in W.P.No.11826 of 2004 and batch, dated 01.03.2005, had considered the aspect of jurisdiction, did not go into that aspect in view of the peculiar facts and circumstances, as observed therein, and the same does not amount to laying down of any proposition conferring jurisdiction on the Tribunal to entertain the O.As., of the present nature.

12. He also contends that the BSNL is not precluded from challenging the original orders passed in the O.As., notwithstanding the consequential contempt proceedings filed by the respondents herein and obtaining of the orders therein. When the Tribunal had no jurisdiction to entertain the present O.As., any orders passed by it in the said O.As., would be *void ab initio* and nullity in the eye of law and, therefore, the orders passed by the Tribunal are liable to be set aside.

13. On the other hand, Sri J.Sudheer, learned counsel appearing for the respondents in all the writ petitions, vehemently contends that – *firstly*, the BSNL had approached this Court with unclean hands; *secondly*, the Tribunal had only directed to implement the orders, dated 01.04.2003, 29.04.2003 and 30.05.2003, of the BSNL authorities; *thirdly*, the present batch of writ petitions was filed suppressing the earlier round of litigation; and *fourthly*, a Division Bench of this Court, while dismissing W.P.No.11826 of 2004 and batch, by a common order, dated 01.03.2005, though the aspect of jurisdiction was raised, was not inclined to go into that aspect and having regard to the facts and circumstances of the case, directed the BSNL authorities to implement the common order of the Tribunal, and the said order had become final even on the question of jurisdiction. Therefore, having implemented the said order, it is not open for the BSNL to challenge the original order, dated 09.01.2004, passed by the Tribunal, in O.A.No.1213 of 2003 and batch.

14. In view of the rival contentions of both sides, the main question that arises for consideration is – whether the Tribunal has jurisdiction under the Act to entertain the O.As., filed by the respondents herein, seeking regularization of their services? if so, whether the common order, dated 01.03.2005, passed by a Division Bench of this Court in W.P.No.11826 of 2004 and batch, would operate as '*res judicata*.'

15. Admittedly, the Tribunal had disposed of the batch of O.As., filed by the respondents herein along with others, directing the BSNL authorities to dispose of the applications of the applicants therein by passing appropriate orders.

16. For better appreciation, it is apt to extract the relevant portion of the impugned common order, dated 09.01.2004, passed by the Tribunal, which is thus:

> **"The learned counsel for the applicants have produced before us the copy of the order dated 1.4.2003, 29.4.2003 and 30.5.2003. It is seen that the applicants are included in the list dated 1.4.2003 and 29.4.2003 along with others. It is also noticed from the order dated 1.4.2003 and 29.4.2003 that RM posts have been created from 1.10.2000 to the SSAs to the extent of casual labourers to be regularized therein. In view of the above circumstances we do not find any reason as to why the respondents are not implementing the orders.**
>
> **We, therefore, dispose of the application by directing the respondents to pass appropriate order by implementing the**

orders mentioned above in relation to applicants, within a period of one month from the date of communication of this order."

17. From the above, it is obvious that there was a positive direction, issued by the Tribunal, to implement the orders, mentioned therein, in relation to the respondents herein.

18. It is further obvious therefrom that the Tribunal had taken into account various orders, dated 01.04.2003, 29.04.2003 and 30.05.2003, which relate to the official correspondence between the Divisional Office at Hyderabad and the Central Office at New Delhi, from which it is evident that all the respondents herein are fit to be considered for regularization of their services.

19. In this context, it is necessary to note that W.P.No.11826 of 2004 and batch were filed before a Division Bench of this Court, challenging the common order, passed by the Tribunal, in contempt petitions, filed before the Tribunal for non-implementation of the common order in O.As. Regardless of the maintainability of the writ petitions, at paragraph No.5 of its common order, dated 01.03.2005, in W.P.No.11826 of 2004 and batch, the Division Bench of this Court observed as under.

"As far as the contention relating to jurisdiction aspect is concerned, though the Full Bench of the Tribunal has held that the Tribunal had no jurisdiction in respect of the service conditions of the employees of BSNL, but in view of the peculiar facts and circumstances of the case, we are not inclined to go into the jurisdictional aspect, and as to what is required to be done is the implementation of the orders passed by the authorities themselves. Under those circumstances, it will be a futile exercise again to direct the employees to approach this Court under Article 226 of the Constitution of India....."

20. From the above, it appears that though the aspect of jurisdiction had fallen for consideration, the Division Bench of this Court did not go into that aspect, perhaps, with a view that it would be only a futile exercise. Therefore, it is obvious that the Division Bench did not lay down any ratio as regards the jurisdiction of the Tribunal to entertain the O.As., of the present nature, basing on the merits and, therefore, the common order, dated 01.03.2005, passed by the Division Bench of this Court in W.P.No.11826 of 2004 and batch, cannot be treated as a binding precedent.

21. It is to be further seen that pursuant to the intervention by another Division Bench of this Court, by its common order, dated 08.09.2005, in C.C.No.817 of 2005 and batch, the common

order of the Tribunal had been complied with and consequently the services of the respondents herein have been regularized. We are of the considered view that such a compliance, pursuant to the common order of the Division Bench of this Court, in the batch of contempt cases, filed by the respondents herein, however will be subject to the outcome of the present W.P.No.12489 of 2005 and batch.

22. As regards the aspect of jurisdiction, Sri C.V.Mohan Reddy, learned Senior Counsel, places reliance on the common order, dated 29.11.2006, in W.P.No.1657 of 2004 and batch, wherein another Division Bench of this Court, while discussing the aspect of jurisdiction of the Tribunal under Section 14 (2) of the Act elaborately, arrived at a conclusion that in the absence of any notification being issued under Section 14 (2) of the Act, the Tribunal has no jurisdiction to entertain the O.As., filed by the applicants therein and, eventually, allowed the said batch of writ petitions, setting aside the common order impugned therein.

23. Therefore, having regard to the detailed discussion made by the Division Bench of this Court in W.P.No.1657 of 2004 and batch, dated 29.11.2006, regarding the issue of jurisdiction of the Tribunal in a right perspective, we have no hesitation to hold that the respondents herein ought not have approached the Tribunal by filing O.As., for redressal of their grievance i.e., regularization of their services, and the Tribunal also ought not have entertained their O.As.

24. The other contention of the learned counsel appearing for the respondents herein that the BSNL has approached this Court with unclean hands cannot be sustained for the simple reason that merely because a common order was passed in the contempt petitions, which was flown from the common order of the Tribunal in the O.As., the said common order in the O.As., became the subject matter before this Court in this batch of writ petitions. In other words, the BSNL cannot be precluded from challenging the common order passed in the batch of O.As., merely because the common order of the Tribunal was implemented pursuant to the initiation of contempt cases before this Court. However, such compliance is subject to the result of the present batch of writ petitions filed by the BSNL.

25. Insofar as the other contention of the learned counsel

appearing for the respondents herein that the Tribunal had only directed the BSNL to implement the orders therein i.e., orders, dated 01.04.2003, 29.04.2003 and 30.05.2003, it is to be seen that the Tribunal had positively directed to implement the orders said to have been passed by the BSNL. In fact, those are the official correspondence between the Divisional Office at Hyderabad and the Central Office at New Delhi. The said official correspondence cannot be a basis for challenging the same before any Court of law, unless such proceedings are communicated to the respondents herein and the Court or the Tribunal cannot pass any orders basing on such official correspondence.

26. Therefore, we hold that the Tribunal has no jurisdiction to entertain the O.As., filed by the respondents herein, inasmuch as, the BSNL is not amenable to the jurisdiction of the Tribunal and any order or orders passed by the Tribunal upon such O.As., are null and void. Consequently, the impugned common orders, passed by the Tribunal, in the respective O.As., are liable to be set aside.

27. We are of the further view that the consequential proceedings initiated before the Tribunal by way of contempt petitions and filing of writ petitions in W.P.No.11826 of 2004 and batch before this Court would merge with the present common order and consequently would become superfluous.

28. At this juncture, the present litigation has to be viewed from a different angle. It is not in dispute that the respondents herein have been working either as casual labourers or regular employees, at least, for the last three years, by virtue of the common order, dated 08.09.2005, passed by the Division Bench of this Court, in C.C.No.817 of 2005 and batch. Subsequently, another Division Bench of this Court, following the common order, dated 29.11.2006, of earlier Division Bench of this Court, in W.P.No.1657 of 2004 and batch, allowed the present batch of writ petitions, by order, dated 14.12.2006. Pursuant to the said common order, the respondents herein were reverted to the status of casual labourers. The above events would certainly create a sense of insecurity in the minds of the respondents herein. Such a situation, in our considered view, would decrease the efficiency of the employees.

29. In this regard, it is the specific contention of the learned

Senior Counsel appearing for the BSNL that some amount of fraud had been played by the Department by way of showing the required length of service for regularization of the services of the respondents herein.

30. The said contention of the learned Senior Counsel cannot be countenanced for the reason that this aspect cannot be gone into by this Court, in a writ petition, nor it is anybody's case that the respondents herein have played fraud by resorting to fabrication of the records to get the benefit of regularization. In any event, these are the questions of fact, which cannot be gone into by this Court, while exercising jurisdiction under Article 226 of the Constitution of India. It is only for the Department to make necessary enquiry with regard to such irregularities and proceed against the erring incumbents, in accordingly with law.

31. As already pointed out, since the respondents are working for so many years, either as 'casual labourers' or as 'regular employees', in different spells, in order to remove the sense of insecurity from their mind, invoking the equity jurisdiction of this Court, we feel it appropriate to direct the BSNL to continue the respondents herein in service as regular employees from which date their services were regularized, pursuant to the intervention by a Division Bench of this Court, by its common order, dated 08.09.2005, in C.C.No.817 of 2005 and batch.

32. We make it clear that this common order is confined only to the respondents in this batch of writ petitions and the same shall not be a binding precedent to any person, in future.

33. With the above observations and directions, all the abovementioned writ petitions are allowed, setting aside the impugned common orders, passed by the Tribunal, in the respective O.As., only insofar as it relates to the respondents herein. However, there shall be no order as to costs.

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JUSTICE D.S.R. VARMA

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JUSTICE K.C. BHANU

14TH DECEMBER 2007
MSR

Note: Issue C.C. in two weeks.
(B/o)
MSR